applicant, who seems to have been the unfortunate victim of circumstances, although he was responsible, initially, for his own predicament. However, the respondents cannot, in all good conscience, disclaim all responsibility for a lapse on the part of their Interview Board. The sequel to all this has been lamentable. The applicant is back to where he was, and, in addition, he has had, for several months, the gravest personal anxiety any civil servant can ever have, of a serious criminal charge hanging over his head. He has been put to considerable expense to defend and clear himself. And, withal, the applicant's recall was not because he was found unfit for confirmation in the appointment, but rather that public interest requires it. In all the circumstances, therefore, I propose to exercise my discretion in the matter of costs, so that, instead of costs following the event, I make no order.

In fairness to the respondents, I wish to emphasise that, in making no order for costs in their favour, I attach no blame whatsoever to the respondents, or to their Interview Board, or to any member thereof for what is clearly an oversight, which may be attributed to heavy pressure of work.

In conclusion, I would express my sincere hope that the applicant's action in availing himself of the right to bring this matter for determination by the Court will not, in any way, prejudice his future career in the service of the Government. I must add that I am greatly indebted to both Mr. C. C. Rasa Ratnam, Counsel for the applicant, and to Mr. I. Talog Davies, Federal Counsel, for their most able arguments and lucid presentation of their case, which have been of the greatest assistance to me.

Application dismissed.

TENG KUM SENG v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson C.J.) May 6, 1960]

[K. L. — Selangor Criminal Appeal No. 5 of 1960]

Evidence — Evidence of system — Identity of voice on the telephone — Evidence of handwriting expert — Chinese characters.

Criminal Law and Procedure — Charge — Combination of one element of the completed offence of extortion under Penal Code s.384 with one of inchoate offence under s.385 — Test of sufficient certain notice.

In this case the appellant was convicted on three charges of putting persons in fear of injury in order to commit extortion contrary to section 385 of the Penal Code. In each case it was alleged that the appellant's method of operation had been to write a letter to his intended victim demanding the money and also make telephone calls referring to the letter. Each of the intended victims made a report to the police but it was only as a result of the report in the third case that the police, after having made arrangements at the telephone exchange, succeeded in arresting the appellant as he was leaving a public telephone call box after having been seen apparently speaking on the telephone and then putting down the receiver. As he was being removed to a police car he threw away a piece of paper which was recovered and on it was found written the telephone number of the complainant in the third case.

Beyond the evidence as to the circumstances in which he was arrested which was admissible in relation not only to the third charge but also as evidence of system relevant to the first and second charges, was the evidence that each of the three victims was given the opportunity of listening to a number of persons including the appellant, all strangers to them, speaking on the telephone and each of them identified the voice of the appellant as the voice which had spoken to him on the telephone. There was also the evidence of a handwriting expert who had compared the letters received by the three victims with specimens of the appellant's handwriting and formed the opinion that the three extortion letters were in the handwriting of the appellant.

Held: (1) what weight is to be attached to the evidence of the identity of voices, particularly in the case of Chinese voices, may be a matter of opinion: it was a matter on which the Magistrate was entitled to form his own opinion. As to its admissibility the Court has no reason to quarrel with it;

(2) evidence of handwriting expert is always of very questionable value, particularly in the case of Chinese characters.

Observations on carelessness in drawing charge.

Per Curiam: The real test in all these cases is whether the accused person gets sufficient certain notice of what is charged against him. In spite of the inartistic words (in the charge) it is quite clear both from the inclusion of the words "in order to the committing of extortion" and the reference to section 385 that what was alleged against him was not the consummated offence but the inchoate offence.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph, Jr. for the appellant.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This appellant was convicted in the Magistrate's Court at Kuala Lumpur on three charges of putting persons in fear of injury in order to commit extortion in contravention of section 385 of the Penal Code. He was sentenced to six months' imprisonment on each charge, the sentences to run concurrently. Against these convictions he has now appealed.

The three alleged offences were committed on 3rd and 11th March, 1959, and on 6th May, 1959, against three persons named Wong, Kok and Wan, all residing or carrying on business in the centre of Kuala Lumpur.

In Wong's case the complainant received a telephone call from a Chinese whom he did not know stating that a letter had been left in his house. Shortly after he received another telephone call in which what appeared to be the same voice told him that the speaker was the leader of an extortion gang and demanded $2,000 from him. The speaker went on to ask about the letter which Wong had not yet seen and told him not to report the matter to the Police. If he did the lives of his family and himself would be in danger. Later his wife brought him an envelope which had been left at his house. This contained a bullet and a letter written on red paper and in Chinese characters demanding $2,000 and threatening that if the money was

not paid he would become the enemy of what was stated to be an organization of "secret society thugs". The money was to be put by the side of a lottery kiosk. Wong immediately reported the matter to the Police but they were unable to make any attempt to trap the sender because the time stated for depositing the money had past.

In Kok's case the facts were very similar. He received a letter written on red paper asking for $3,000 and a bullet and later he received a telephone call asking if he had received the letter and saying that if he did not comply with its terms his life would be in danger. Later there was a similar telephone call and Kok reported the matter to the Police. The Police made an attempt in this case to trap the sender by placing a tin containing money at the spot indicated in the letter but the trap went amiss for the money was picked up by a mad vagrant who happened to be wandering in the neighbourhood.

In Wan's case, also, a letter written on red paper demanding $1,000 and a bullet were received and in the course of the same day he received three telephone calls each in the same voice and each referring to the letter demanding money. In the meantime, however, he had reported the matter to the Police and arrangements had been made at the telephone exchange which had better not be described here. In accordance with these arrangements when Wan received the third telephone call from the same voice he engaged the speaker in conversation but made a signal to the telephone exchange when it was ascertained that the call was being made from a public call box in Imbi Road. A police radio car was immediately called and proceeded to the call box in question where the present appellant was seen apparently speaking on the telephone. When he put the receiver down and left the box he was arrested and as he was being removed to the Police car he threw away a piece of paper. This piece of paper was recovered and on it was found written Wan's telephone number.

Beyond this evidence as to the circumstances in which the appellant was arrested which was of course admissible in relation not only to the third charge but also as evidence of system relevant to the first and second charges, there were two other pieces of evidence which tended to implicate him in all three offences.

In the first place, a handwriting expert compared the letters received by the three victims with each other and with specimens of the appellant's handwriting and formed the opinion that all these writings were by the same person, that is to say that the three extortion letters were in the handwriting of the appellant.

In the second place, each of the three victims separately was given the opportunity of listening to a number of persons including the appellant, all strangers to them, speaking on the telephone and each of them identified the voice of the appellant as the voice which had spoken to him on the telephone.

At the trial the appellant gave evidence in which he denied all three charges. He explained his presence in the telephone box at Imbi Road where he was arrested by saying that he had come to Kuala Lumpur to see a man about buying a motor-car, that he was attempting to get in touch with a friend but when he lifted the telephone receiver could not get any response. As regards the piece of paper with Wan's telephone number written on it he said he had found it lying in the telephone box and picked it up out of curiosity. As regards his being in Kuala Lumpur to buy a motor-car his evidence was corroborated by a friend.

The Magistrate, perhaps not unnaturally, was not impressed with the truthfulness of the appellant's story and on the prosecution evidence he was satisfied that he was guilty on all three charges. He accordingly convicted him.

Before me the convictions were attacked by counsel for the appellant with very considerable ability on a number of grounds. Some of these were not seriously pressed and only three of them call for consideration at any length.

In the first place it was said that the charges were bad for duplicity.

The first charge read as follows:—

"That you on the 3.3.1959 at about 1 p.m. at No. 2 Jalan Gading, Kuala Lumpur, in the State of Selangor, in order to the committing of extortion, did put one Wong Kup Sing in fear of injury and thereby dishonestly induced the said Wong Kup Sing to deliver to you the sum of $2,000, and you have thereby committed an offence punishable under section 385 of the Penal Code."

and the other two charges were similar.

Clearly, this charge is badly and unskilfully drawn.

By section 383 of the Penal Code extortion is defined as intentionally putting a person in fear of injury and thereby dishonestly inducing him to deliver any property. By section 384 the completed offence of extortion, that is the putting in fear and inducing the victim to deliver property is an offence punishable with three years' imprisonment. By section 385 what has been called the inchoate as distinct from the consummated offence of extortion is itself made an offence. The section says that whoever, in order to the committing of extortion, puts any person in fear of injury is guilty of an offence punishable with two years' imprisonment.

Considered as a mere matter of words the charge as framed seems to combine one of the elements in the offence under section 384 with one of the elements of the offence under section 385. It alleges that the accused put the complainant in fear of injury in order to the committing of extortion and then goes on to allege what the prosecution never intended to allege (and had not a scrap of evidence to support) that there was an inducement which induced the delivery of property.

This carelessness is, of course, inexcusable. The question, however, is whether it altogether vitiates subsequent proceedings. There is no question of duplicity as argued by Mr. Joseph in

the sense that both the inchoate and the consummated offence, are alleged in the same charge. There is thus no question of any infraction of section 163 of the Criminal Procedure Code. The real test in all these cases is whether the accused person gets sufficient certain notice of what is charged against him. Here I think that in spite of the inartistic words it is quite clear both from the inclusion of the words "in order to the committing of extortion" and the reference to section 385 that what was alleged against him was not the consummated offence but the inchoate offence.

Then it was said that the evidence of identity of voices was inadmissible. Here we must be clear as to what that evidence was. There was no question of putting in evidence statements made to Police officers in the course of a Police investigation which so often proves fatal to identity parade evidence. The evidence of each of the complainants was that at the Police Station he heard a number of voices on the telephone and picked out one of those voices as the voice which had spoken to him at the time of the attempted extortion. Then there was the evidence of a Police officer that in each case the voice to which the witness referred in his evidence before the Magistrate was in fact the voice of the accused. What weight is to be attached to such evidence, particularly in the case of Chinese voices, may be a matter of opinion. But it was a matter on which the Magistrate was entitled to form his own opinion and as to its admissibility I can see no reason to quarrel with it.

Finally it was said that the evidence of the handwriting expert was given undue weight.

Such evidence is of course always of very questionable value, particularly in the case of Chinese characters. In the present case it suffered from the additional defect that the expert very candidly admitted that although he had studied the subject for a few months he had had very little practical experience, although it is to be noted as very much in his favour that he avoided the dogmatic assertiveness which is so often characteristic of this type of witness. Had there been no other evidence it would, of course, have been in the highest degree unsafe to convict on this evidence. There is, however, a great deal of other evidence and it is quite impossible to say that the Magistrate attached undue weight to this particular piece of evidence.

In all the circumstances of the case I find I have no option but to dismiss the appeal.

The sentences have not been appealed against. I think, however, I should express the view that although no previous convictions were proved against the appellant they are extremely lenient particularly in view of the prevalence of this type of offence.

Appeal dismissed.

IPOH TOWN COUNCIL & ANOR. v. NG KHOON KHOON (No. 2)

[C. A. (Thomson C.J., Hill and Good JJ.A.) May 30, 1960]

[Ipoh — F.M. Civil Appeal No. 4 of 1960]

Interpretation — Subordinate legislation — "Open development area" — Meaning of — Canons of interpretation.

Local Authority — Town planning — "Open development area" used in Town Council plan — Town Boards Enactment (Cap. 137).

Where an expression is used in any form of legislation, it must be interpreted in accordance with the ordinary canons of interpretation.

Therefore, where the expression "open development area" was used by the Ipoh Town Council as part of a plan which had statutory authority and the learned Judge below had, basing his construction on three considerations: (i) the opinion of experts; (ii) the wording of the reference on the plan itself; and (iii) the development which has taken place in practice in the town of Ipoh, interpreted the expression to mean an area for detached or semi-detached private residences only; on appeal,

Held: (1) the evidence of experts was not admissible;

(2) the only valid consideration for the purpose of construction was the wording of the plan; and

(3) when so interpreted the expression "open development area" meant an area in which the Town Council's discretion to approve buildings was fettered to the extent that user for all industrial purposes or for shophouses or terrace dwellings was prohibited.

Per Thomson C.J.: "What we have to ask is not what persons professionally engaged in the pursuit of town planning mean by it when discussing their own *mystique* among themselves but what meaning would it convey as to the intention of the Town Council when it made the Plan to a prospective purchaser of land or his legal advisers."

Cases referred to:—

(1) *Marquis Camden* v. *Commissioners of Inland Revenue* [1914] 1 K.B. 641, 647.

(2) *Mansell* v. *R.* 8 E. & B. 109.

(3) *Commissioners of Inland Revenue* v. *Duke of Devonshire* [1914] 2 K.B. 627, 640.

COURT OF APPEAL, appeal from the decision of Smith J. reported at p. 103, *post.*

Yeoh Kian Teik for the appellants.

B. K. Das (*N. Sharma* with him) for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This appeal raises a question of some importance as to the effect of the town planning provisions of the Town Boards Enactment.

The proceedings were commenced by Mr. Ng Khoon Khoon, the respondent to the present appeal, who is the registered proprietor of a piece of land known as Lot No: 37016 lying within the Town of Ipoh on which he has built a dwelling house where he lives with his family. The two adjoining pieces of land, Lots Nos: 37014 and 37015, which are also in the Town of Ipoh, belong to Madam Khoo Chooi Sim as registered proprietor who is not a party to this appeal, although she was heard by her counsel at the trial.